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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

3 LEADENHALL CAPITAL PARTNERS  
4 LLP, et al.,

5 Plaintiffs,

6 v.

24 Civ. 3453 (JGK)

7 JOSH WANDER, ET AL.,

Conference

8 Defendants.

9 -----x

10 New York, N.Y.  
11 October 24, 2024  
12 3:15 p.m.

13 Before:

14 HON. JOHN G. KOELTL,

15 District Judge

16 APPEARANCES

17 KING & SPALDING LLP  
18 Attorney for Plaintiff  
19 BY: LEIGH M. NATHANSON  
20 BRIAN K. DONOVAN  
21 MICHAEL S. TAINTOR

22 SMITH GAMBRELL & RUSSELL LLP  
23 Attorney for Defendant 777 Partners (entities)  
24 BY: DAVID A. PELLEGRINO  
25 JOHN G. MCCARTHY, SR.  
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Attorney for Defendant Advantage Cap. and King  
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APPEARANCES (Continued)

KRAMER, LEVIN, NAFTALIS & FRANKEL, LLP  
Attorney for Defendant Wander

BY: JORDAN L. ESTES

MORVILLO, ABRAMOWITZ, GRAND, IASON, & ANELLO P.C.  
Attorneys for Defendant Steven Pasko

BY: CHRISTOPHER B. HARWOOD

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1 (Case called)

2 MS. NATHANSON: Good afternoon, your Honor.

3 Leigh Nathanson from King & Spalding for plaintiffs  
4 Leadenall, and I'm here with my colleagues Brian Donovan and  
5 Michael Taintor.

6 MR. WATKINS: Good afternoon, your Honor.

7 Jonathan Watkins with Cadwalader. Here on behalf of  
8 Mr. King and Advantage Capital, and I'm here with my partner  
9 Matthew Karlan.

10 MR. MCCARTHY: Good afternoon, your Honor.

11 John McCarthy, David Pellegrino, and Ryan Solfaro from  
12 Smith Gambrell & Russell on behalf of the 777 entity  
13 defendants.

14 MS. ESTES: Good afternoon, your Honor.

15 Jordan Estes from Kramer Levin on behalf Mr. Wander.

16 MR. HARWOOD: Good afternoon, your Honor.

17 Chris Harwood from Morvillo Abramowitz on behalf of  
18 defendant Pasko.

19 THE COURT: Okay. Good afternoon, all.

20 I had originally scheduled this conference because of  
21 the flurry of letters over the issues of discovery and whether  
22 discovery should be stayed pending a decision on the motions to  
23 dismiss, so let me just go over that.

24 There is a stipulation with respect to the scheduling  
25 on the motions to dismiss. They were all scheduled to be

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1 filed. I assume that they were filed on October 10. The  
2 responses are due November 21. The replies are due  
3 December 12.

4 Then there were several motions to stay discovery  
5 pending a decision on the motions to dismiss. I had thought  
6 that I might be able to decide those motions without extensive  
7 briefing, but hope springs eternal only to be dashed in this  
8 case, so the parties want full briefing on the motions to stay  
9 discovery. And you all, so far as I can tell, didn't come to  
10 any agreement with respect to that. Am I right?

11 All of the defendants are seeking to stay discovery  
12 pending a decision on the motions to dismiss; is that right?

13 MR. MCCARTHY: That's correct, your Honor.

14 THE COURT: Okay. You all didn't agree on any  
15 schedule. Am I right that all of the motions to stay discovery  
16 have now been filed?

17 MS. ESTES: Yes, your Honor. That's my understanding.

18 THE COURT: Okay. And so the only issue is the date  
19 for the plaintiff to file responses to all of those motions. I  
20 couldn't agree more that there should be a consolidated  
21 response to all of the motions to stay. So what date does the  
22 plaintiff want to respond?

23 MS. NATHANSON: We had asked for three weeks from the  
24 last filed motions, so I think that would take us to  
25 mid-November. It would help probably to have an additional

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1 week on top of that now that we have a fourth motion filed and  
2 that we're responding to four separate motions to dismiss at  
3 the same time. But something in the mid to late November range  
4 makes sense to us.

5 THE COURT: Like November 21?

6 MS. NATHANSON: We can do the same date, sure.

7 THE COURT: Okay. So plaintiff's response on the  
8 motions to stay discovery due November 21.

9 Normally, these are just discovery motions. I'm sure  
10 if I ask whether the defendants want to file replies, the  
11 answer to that will be yes, right? Replies?

12 MS. ESTES: Yes, your Honor.

13 MR. HARWOOD: Yes, your Honor.

14 THE COURT: Yes, yes, yes.

15 So these really are discovery motions, so I don't want  
16 to wait until December 12. So reply is due December 2.

17 One issue I should note for you is -- I'm sorry. Is  
18 there --

19 MR. MCCARTHY: Yes, your Honor.

20 So the 777 entity defendants are in a little bit of a  
21 different boat from the other defendants because we've actually  
22 already moved. Technically their papers, under even their  
23 reading of the rules, are due today subject to obviously what  
24 your Honor does. We have and we included with our papers  
25 responses due to their extensive document request due on

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1 Monday. And we had asked the plaintiffs to -- we would agree  
2 to the schedule that they were proposing if they would agree to  
3 essentially adjourn our time to have to respond to the document  
4 request until the motion was decided so that the companies  
5 didn't have to spend the time of responding to the -- objecting  
6 and going back and forth. So I guess I'll orally ask your  
7 Honor for an extension of time to respond to the discovery  
8 request until the motion is decided.

9 MS. NATHANSON: Just to be clear, for plaintiffs we  
10 would consent to an extension of time for the response to the  
11 discovery request. But what we won't consent to is an interim  
12 stay of discovery pending adjudication on the discovery motions  
13 because --

14 THE COURT: What's the difference between those two?

15 MS. NATHANSON: Well, the discovery motions are  
16 presumably not going to be decided now until after December 2.  
17 And I think they've had a month now with the discovery requests  
18 to submit --

19 THE COURT: But there's a motion to stay discovery.

20 MS. NATHANSON: But a motion to stay discovery doesn't  
21 automatically stay discovery by the making of the motion.

22 THE COURT: Yes. But I -- you know --

23 MS. NATHANSON: So if they want a few more weeks to  
24 respond, we would consent to that.

25 THE COURT: That's gracious of you. But I really

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1 would have expected more cooperation among the parties. That  
2 doesn't make any sense. Yes, the filing of the motion doesn't  
3 automatically stay responses to the outstanding discovery.

4 Was the outstanding discovery, by the way, timely? I  
5 thought that discovery shouldn't proceed until you all have had  
6 the 26(f) conference.

7 MS. NATHANSON: We have, and that's been ordered. And  
8 we issued the discovery requests thereafter. A-CAP also issued  
9 discovery requests for us for which we're on the clock and  
10 preparing responses for which are also due next week.

11 MR. MCCARTHY: I agree with that, your Honor. They  
12 were properly timely served.

13 MR. WATKINS: We, A-CAP, your Honor, would be happy to  
14 stay and adjourn for the plaintiff's responses to our request.

15 THE COURT: Okay. Thank you. I will adjourn the  
16 response dates on any of the pending discovery until  
17 December 20. Mutually, you've all done it to both sides. That  
18 doesn't give much time for all of you to respond, or from what  
19 you've told me, you're going to be objecting in any event, so  
20 they're not going to produce very much.

21 MS. NATHANSON: Part of the reason we wanted to get  
22 moving.

23 THE COURT: And I assume that's going to happen on  
24 both sides. So discovery responses to any pending discovery  
25 stayed or adjourned until December 20. And again, I'll try and

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1 get to this.

2 MS. NATHANSON: Your Honor, if the Court would prefer  
3 to adjourn the discovery response date until after at least the  
4 briefing on the motion, we're happy to put our responsive  
5 briefs in earlier.

6 THE COURT: I did. I mean, the replies on the motion  
7 I thought were December 2, and I adjourned the discovery  
8 responses until December 20.

9 MS. NATHANSON: Yes, totally understood. But what I'm  
10 saying is we would forego some of the time between now and  
11 November 21, put in our responses earlier so we can accelerate  
12 this a little bit, giving them the same amount of time on  
13 reply.

14 THE COURT: Okay. November 8?

15 MS. NATHANSON: That works.

16 THE COURT: November 8 for the response on the motions  
17 to stay discovery, and then the reply November 18. And I'll  
18 stay the responses on outstanding discovery requests until  
19 December 6. Okay. Done.

20 Going over the docket sheet, I indicated in my last  
21 order that there was, according to the docket sheet, an open  
22 motion to intervene by Haymarket, and I took that motion to be  
23 a motion to -- and it was a motion to intervene for purposes of  
24 the preliminary injunction. And I allowed Haymarket to  
25 intervene for purposes of the motion for preliminary



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1 injunction. And so the motion was granted to that extent, and  
2 I then closed the motion as an open motion on the docket sheet.

3 I also noticed that the other two motions by National  
4 Founders and ING had not actually been closed on the docket,  
5 but I plainly allowed them to intervene for purposes of motion  
6 for preliminary injunction. So I closed those motions on the  
7 docket. Anyone want to be heard on any of that? No? Okay.

8 So then I've gotten correspondence with respect to  
9 A-CAP's request for guidance on a proposed transaction. I know  
10 from the submissions that the proposed transaction is a matter  
11 of public record, yes?

12 MR. WATKINS: Your Honor, the transaction itself is  
13 not. The belated proposed acquisition of a football team is,  
14 but not the contemplated transaction per se.

15 THE COURT: Okay. So the parties shouldn't discuss  
16 anything which is not public.

17 A-CAP has submitted the correspondence for guidance on  
18 whether the proposed transaction would be a violation of the  
19 preliminary injunction and argues in the papers that it would  
20 not be a violation of the preliminary injunction and wants  
21 guidance from the Court to give it comfort that it would not be  
22 a violation of the preliminary injunction.

23 Leadenhall wants discovery into whether there's  
24 anything about the transaction that would violate the  
25 preliminary injunction.

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1           My reaction to all of the correspondence is I don't  
2     give advisory opinions, and I couldn't possibly advise whether  
3     the transaction would be a violation of the preliminary  
4     injunction or not. I have suggested at various points that if  
5     there were contemplated transactions that were at issue, the  
6     parties should discuss them.

7           Leadenhall has no desire to interfere with  
8     transactions that don't interfere with the ability of either  
9     the borrowers or the guarantors to make good on their promises  
10    to Leadenhall. And the other creditors who intervene for  
11    purposes of the preliminary injunction and who are also  
12    entitled to notice with respect to certain transactions, I'm  
13    sure share that view.

14          My reaction to the papers was I don't give advisory  
15    opinions. I had thought that's what lawyers do, they write  
16    opinion letters in which they say that it's the opinion of the  
17    firm that the transaction does not run afoul of any laws or in  
18    this case an order of the Court. But I couldn't make that  
19    decision without an adversary process in which, if necessary,  
20    evidence was taken, expert opinions were offered, and the like.

21          It's possible to conceive – but I'm not suggesting it  
22    – that some declaratory relief could be sought. But even if  
23    declaratory relief would be sought, it would be sought in the  
24    context of an adversary proceeding. And whether there's  
25    discovery attached to that or not, I don't know. I'm not going

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1 to outline such a proceeding.

2 But it's crystal clear to me that I don't give  
3 advisory opinions. That's not my role. And I should also  
4 note, as I've sort of adverted earlier, that the parties -- and  
5 I'm not attempting to assess blame, but the parties can't even  
6 agree on a nondisclosure agreement, much less what would be  
7 necessary to convince either side that their side is correct.

8 So there you have it. That's where we stand. The  
9 parties have to make their own decisions. I mean, the  
10 preliminary injunction is clear. No one has suggested that  
11 it's not. A-CAP says it's clear to A-CAP that the transaction  
12 doesn't violate the preliminary injunction. Leadenhall is not  
13 so sure or at least they haven't said that. They ask for more  
14 information and criticize other leadups to the transaction.

15 If the transaction were to go forward, then it would  
16 be a question whether it is argued that it's in violation of  
17 the preliminary injunction. If A-CAP is so sure that it's not,  
18 A-CAP would act accordingly. If Leadenhall thought that it was  
19 in violation of the preliminary injunction, Leadenhall could in  
20 turn take action. If Leadenhall took action and Leadenhall was  
21 wrong, there are consequences to that also. But I can't judge  
22 these matters on the basis of a requested advisory opinion.

23 So there is one additional point that I want to raise  
24 with A-CAP and Leadenhall at the sidebar.

25 (Pages 12-25 SEALED)

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1 (In open court)

2 THE COURT: All right. Anything further?

3 MS. NATHANSON: Nothing from plaintiffs, your Honor.

4 MR. WATKINS: Nothing from A-CAP, your Honor.

5 MR. MCCARTHY: Nothing from the 777 defendants, your

6 Honor.

7 MS. ESTES: Nothing from Mr. Wander, your Honor.

8 MR. HARWOOD: Or from Mr. Pasko. Thank you, your

9 Honor.

10 THE COURT: Thank you all.

11 (Adjourned)

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